

Agency Contact Information

If you want to fill, dredge, or excavate in a water body in northern Indiana, contact:

U.S. Army Corps of Engineers
Detroit District
P.O. Box 1027 • Detroit, Michigan 48231-1027
Phone: 313-226-2218
www.lre.usace.army.mil/functions/rf/dtwhome.html

If you want to fill, dredge, or excavate in a water body in central or southern Indiana, contact:

U.S. Army Corps of Engineers
Louisville District
P.O. Box 59 • Louisville, Kentucky 40201-0059
Phone: 502-315-6733
www.lrl.usace.army.mil/

If you apply for a permit from the Corps of Engineers, you will also need to contact:

Indiana Department of Environmental Management
Office of Water Quality
Section 401 Water Quality
P.O. Box 6015 • Indianapolis, Indiana 46206-6015
Phone: 800-451-6027
www.in.gov/idem/water/planbr/401/index.html

If your project is located in the floodway of a flowing water body or proposes to alter the shoreline or lakebed of a public freshwater lake, contact:

Indiana Department of Natural Resources
Division of Water
402 West Washington Street
Room W264 • Indianapolis, Indiana 46204-2748
Phone: 317-232-4160 or 877-928-3755 (toll free)
www.in.gov/dnr/water

For basic information on wetlands and an overview of federal wetland regulations, contact:

U.S. Environmental Protection Agency
Region 5 Water Division
77 West Jackson Boulevard • Chicago, IL 60604-3590
1-800-621-8431 (use this number to reach specific contacts, request wetlands literature, and request assistance with other environmental concerns)
www.epa.gov/owow



WATERWAYS

Permitting Handbook

A guide to the permit process for work that affects Indiana's waters.



Indiana Department of Environmental Management

Lori F. Kaplan, Commissioner

Office of Water Quality

Tim Method, Assistant Commissioner

Produced in cooperation with

U.S. Army Corps of Engineers

Indiana Department of Natural Resources

WATERWAYS

Permitting Handbook

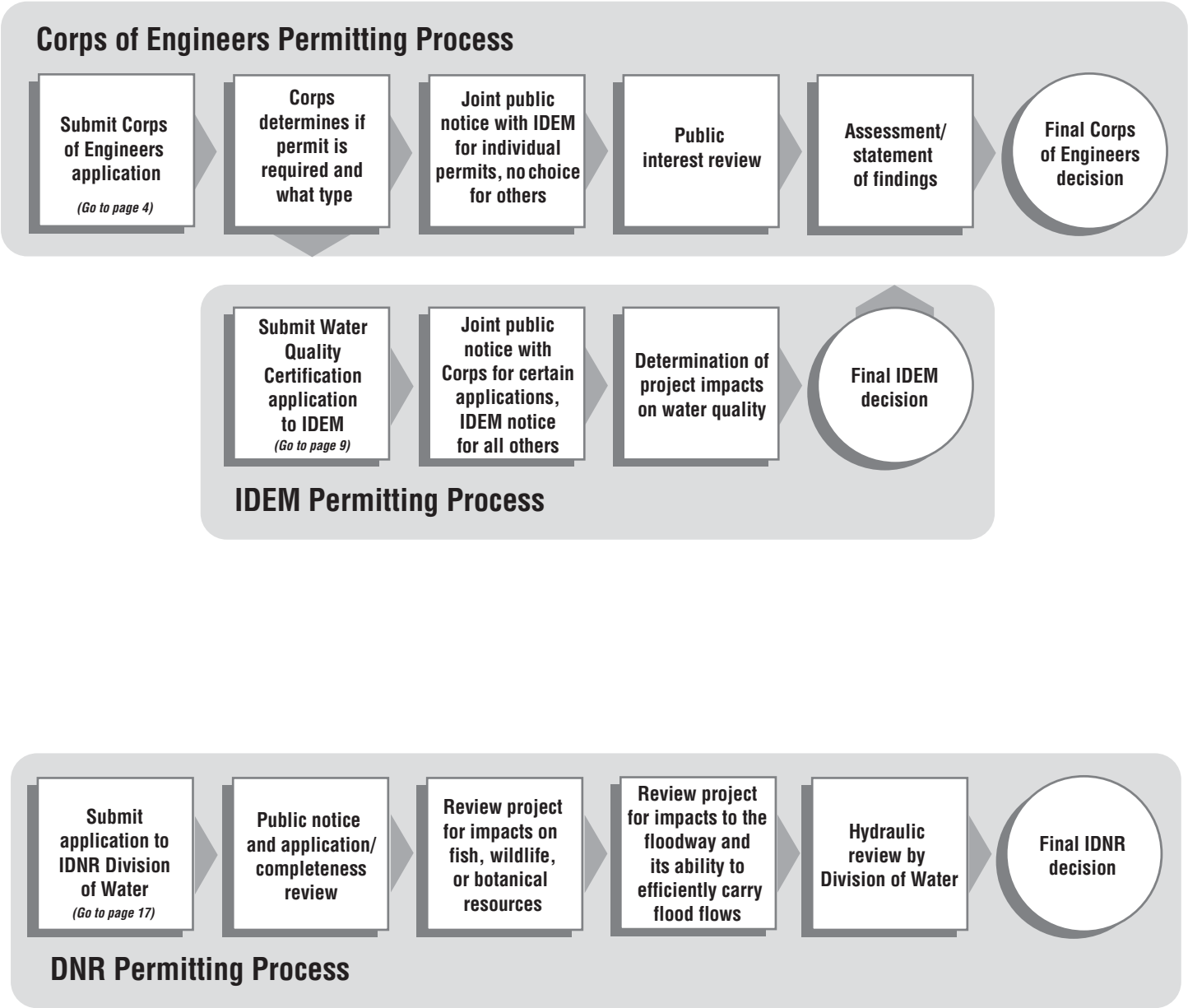
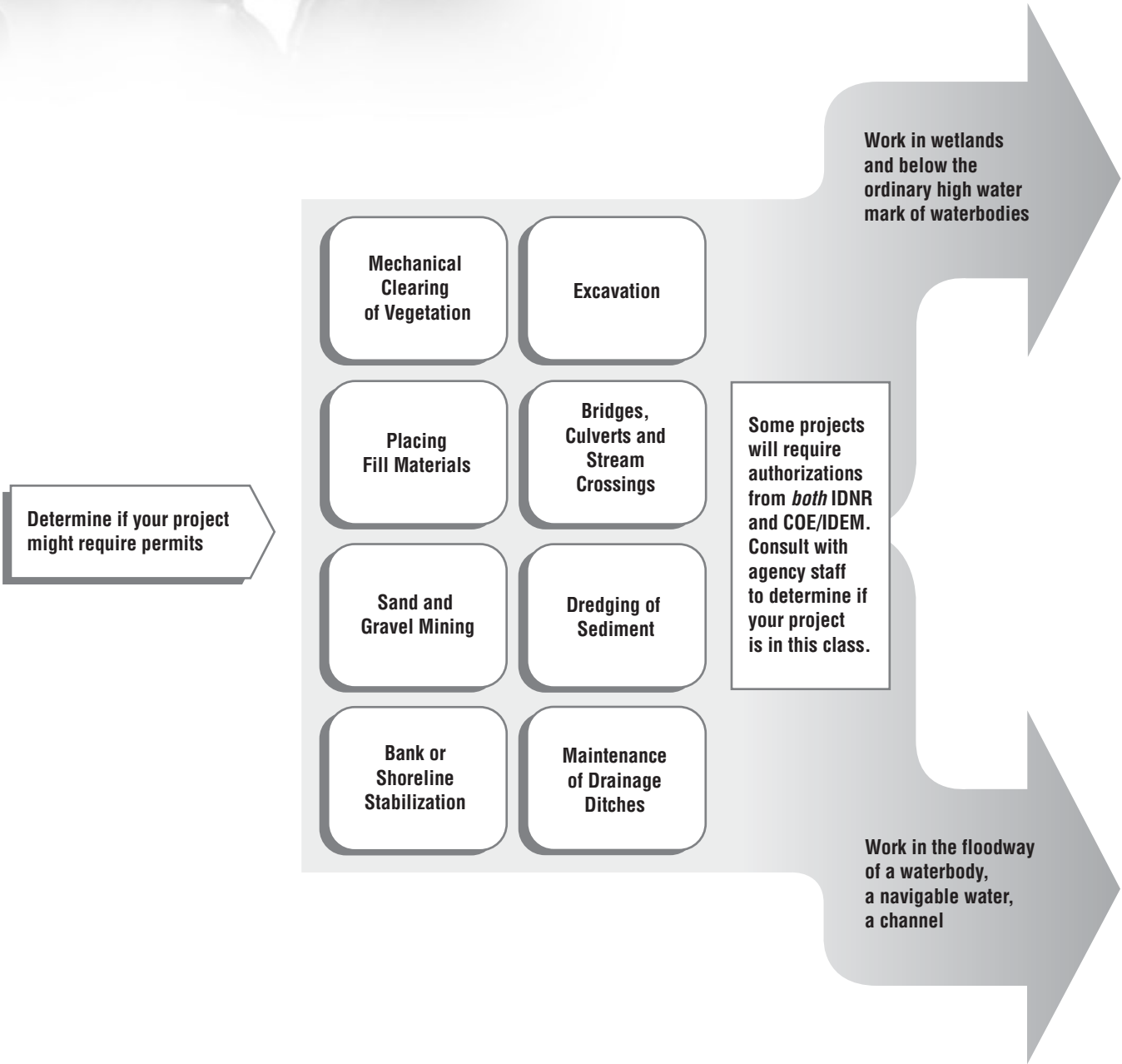
A guide to the permit process for work that affects Indiana's waters.



August 2002

Overview of Waterway Regulations

This flowchart gives an overview of the regulatory process required for work done in or near the waters of the state.



Tip: Contact all three regulatory agencies early in your project planning process (see back cover for contact information).

IMPORTANT NOTE:

The purpose of this handbook is to provide general information concerning the legal requirements that may apply when persons wish to engage in activities that would affect wetlands or other waters such as rivers, lakes, and streams. Given the complexity of state and federal regulations, this handbook gives a broad overview of key aspects of the regulatory process, such as the basic authorities of each agency, activities that are regulated, and information about required forms and notices. This handbook is general and is not determinative of any issue; nor does it establish or affect legal rights. Agency decisions in any particular case will be made by applying applicable law to the specific factual situations.

The U.S. Supreme Court decision regarding federal jurisdiction over isolated waters (Corps of Engineers v. Solid Waste Agency of Northern Cook County), has affected the authority of the federal government to regulate wetlands and other waters. Due to ongoing developments in both state and federal litigation, the reader is encouraged to contact the Department of Environmental Management to determine current legal obligations. Additionally, legislation and agency rulemaking will continue to shape the scope of wetland regulation, which will in turn affect your potential project. IDEM's web site provides current information on state and federal wetland regulations, which you may wish to consult during your project planning process:

<http://www.IN.gov/idem/water/planbr/401/index.html>

Additionally, your particular project may require other permits from state, federal, or local agencies. You should be aware of the need for permits and your obligation to obtain any other permits or authorizations that may be required for your project. It is important to remember that in some cases, an activity and/or waterbody may not be regulated by one agency, but will be regulated by another. IDEM recommends consulting with various local agencies, such as your county surveyor, county plan commission, county highway department, and county health department when planning your project.



Agricultural producers who may be planning work in wetlands are advised to contact the Natural Resources Conservation Service for additional information on compliance with the Swampbuster provisions of the Food Security Act. Persons receiving farm program benefits must insure that their project is in compliance with these separate requirements administered by the U.S. Department of Agriculture.

Contact:
U.S. Department of Agriculture
Natural Resources Conservation Service
Indiana State Office
6013 Lakeside Boulevard
Indianapolis, Indiana 46278-2933
Phone: (317) 290-3200
FAX: (317) 290-3225
<http://www.in.nrcs.usda.gov/>

Table of Contents

Introduction	i
Who Should Read This Handbook?	i
Why We Need To Protect Our Waters	ii
How To Use This Handbook	ii
Agencies That Regulate Indiana’s Waters	ii
Part I. U.S. Army Corps of Engineers	1
Types of activities that require authorization	1
History and authority of the Corps of Engineers	1
Jurisdiction	2
Permits	2
How the Corps of Engineers reviews your project	3
Filling out the application form	4
Contact information	6
Part II. Indiana Department of Environmental Management	7
Types of activities that require authorization	7
History and authority of IDEM	7
Jurisdiction	8
Permits	8
How IDEM reviews your project	8
Filling out the application form	9
Contact information	11
Part III. Indiana Department of Natural Resources	12
Types of activities that require authorization	12
History and authority of the DNR	12
Jurisdiction	13
Permits	13
Early environmental coordination	14
How the DNR reviews your project	14
Filling out the application form	17
Contact information	17
Glossary of Terms	18
Frequently Asked Questions	20

Introduction

In Indiana, there are three different government agencies that have jurisdiction over the waters of the state (lakes, ponds, rivers, streams, creeks, drainage ditches, and wetlands). These three agencies (U.S. Army Corps of Engineers, Indiana Department of Environmental Management, and Indiana Department of Natural Resources) administer a variety of federal and state regulations that are associated with the waters of the state.

Because there is more than one agency and regulatory program involved, at times, the process for obtaining the necessary permits for projects that involve waters of the state can be rather confusing, especially for those who have not been through the permitting process before. People often ask: “When do I need a permit? What agency do I get it from? Who do I contact at the agency? How long will it take?”

This handbook was designed to answer these types of questions and help clear up the confusion. Here, you will find background information on the specific regulations that govern work in Indiana’s waters. This handbook also provides step-by-step guidance and contact information to help you quickly and easily apply for the permits you may need.



Who Should Read This Handbook?

In broadest terms, this handbook was designed for anyone who is contemplating working in or around the waters of Indiana. For instance, if you are considering any of the activities listed here, chances are good that you will need one or more permits from one or more regulatory agencies.

1. Filling, dredging or excavating within wetlands or any other water body for any purpose, including construction of buildings, roads, or leveling of property.
2. Construction in the floodway of a waterbody.
3. Mechanical clearing of riparian corridor vegetation, such as trees along a stream or river.
4. Channelizing, widening, or otherwise altering the flow or path of a stream, ditch, or river.
5. Construction of any type of permanent or temporary dam, causeway, or other related structure.
6. Construction of new seawalls, seawall refacing, underwater beaches, boat wells, boat houses, and fish attractors.
7. Ditch construction and/or reconstruction; tile drain installation and/or repair; and installation of pipelines having non-watertight joints.
8. Widening, deepening, or construction of a pond or other related structure for the purpose of modifying a mapped floodway or for storm water detention/retention.
9. Bank armoring or other related practices, such as the placement of a revetment.
10. Construction of any bridge or related structure.
11. Sand, gravel, peat, or other related mining activity within any water body.

(This is not a complete list, but it contains some of the more commonly permitted activities.)

Why We Need To Protect Our Waters

All humans have the basic need for clean water to drink. People also want clean water for recreation, such as swimming, boating, and fishing. Also, clean water and habitat are necessary to protect the animals and fish that rely on lakes, rivers, and wetlands for food, shelter, and a place to live. State and federal regulations play a critical role in making sure that the waters of Indiana are clean and safe for all Hoosiers to use and enjoy.

Most people understand the importance of preserving our water quality. The regulations described in this handbook set the standard levels of protection that must be achieved to sustain clean water into the future. The regulations also ensure that all landowners meet the same standards to keep the playing field level for everyone.



How To Use This Handbook

This handbook is divided into three main sections; one for each of the agencies that has regulatory jurisdiction over the waters of the state. In the front of this handbook, there is a flowchart that can help you determine which permits you may need and which of the three agencies is/are responsible for administering them.

If you already know which agency administers the permits you need, you can go directly to the section of the handbook that focuses on that agency. There, you will find detailed information and useful tips for helping you through that agency’s permit process.

Hopefully, this handbook will provide a lot of guidance that will help you navigate the regulatory process. It certainly can give you a solid understanding of how the various agencies and regulatory programs relate to each other and to the waters of the state. However, there is no substitute for contacting the agencies directly. Any time you are considering a project that has even the slightest chance of impacting waters of the state, IDEM strongly encourages you to contact one or more of the agencies early in the planning process. See the back cover for agency contact information.

Agencies That Regulate Indiana’s Waters

The following three agencies have regulatory jurisdiction over Indiana’s waters:

- U.S. Army Corps of Engineers (Corps of Engineers)
- Indiana Department of Environmental Management (IDEM)
- Indiana Department of Natural Resources (DNR)

The history, authority, and jurisdiction of each of these agencies, along with a description of the permits that each of them administers, are described in detail in this handbook. The following is a brief overview of the agencies and their relationship to the waters of the state and to each other.

U.S. Army Corps of Engineers (Corps of Engineers) has jurisdiction over all navigable waters of the United States under the Rivers and Harbors Act of 1899. It also regulates the placement of dredge or fill materials into the waters of the United States under Section 404 of the Clean Water Act. As a result, no person may deposit dredge or fill materials into the wetlands or waters of the U.S. without a permit from the Corps of Engineers. The permit program is designed to ensure:

- *that our nation’s water resources are safeguarded;*
- *that our nation’s water resources are used in the best interest of the public; and*
- *that environmental, social, and economic concerns of the public are considered.*

As part of the Clean Water Act, the federal government recognized that each state has the right to apply its own water quality standards to waters of the state. In Indiana, the authority to ensure that water quality standards are met is held by IDEM. Consequently, IDEM has an integral role to play with the Corps of Engineers in administering the federal Clean Water Act.

Indiana Department of Environmental Management (IDEM), Office of Water Quality is responsible for protecting the water quality of the waters of the state. IDEM administers the Section 401 Water Quality Certification (WQC) Program. IDEM draws its authority from the federal Clean Water Act and from Indiana’s water quality standards. Any person who wishes to place fill materials, excavate or dredge, or mechanically clear (use heavy equipment) within a wetland, lake, river, or stream must first apply to the Corps of Engineers for a Clean Water Act Section 404 permit. If the Corps of Engineers decides a permit is needed, then the person must obtain a Section 401 Water Quality Certification from IDEM. The Corps of Engineers cannot grant a Section 404 permit without this certification. IDEM reviews the proposed activity to determine if it will comply with Indiana’s water quality standards. A person cannot obtain a Clean Water Act Section 404 permit from the Corps of Engineers without first getting a Section 401 Water Quality Certification from IDEM.

Indiana Department of Natural Resources (DNR), Division of Water is charged by the State of Indiana to maintain, regulate, collect data, and evaluate Indiana’s surface and ground water resources. The Indiana General Assembly empowered the DNR with the responsibility to oversee various construction activities within, over, and/or under the state’s waterways through the creation of a number of regulatory programs. These statutes were enacted to allow the state’s water-related resources to be utilized in a prudent manner, while simultaneously minimizing induced flood-related damages and protecting Indiana’s environmental and cultural resources.



Part I.
U.S. Army Corps of Engineers



**US Army Corps
of Engineers®**

Types of activities that require authorization

The U.S. Army Corps of Engineers (Corps of Engineers) regulates the discharge of dredged or fill material into all waters of the United States (including most wetlands); the construction of any dam or dike across any navigable water of the United States; and structures or work in or affecting navigable waters of the United States. Corps of Engineers regulations apply to both permanent and temporary work. Examples of temporary discharge include dewatering of dredged material before final disposal or temporary fills for access roadways, cofferdams, storage and work areas.

*Some examples of activities requiring a
Section 404 Permit:*

- Construction of piers, wharves, bulkheads, dolphins, marinas, ramps, floats, intake structures, and cable or pipeline crossings.
- Dredging and some excavation.
- Depositing of fill or dredged material in waters of the U.S. or adjacent wetlands.
- Site development fill for residential, commercial, or recreational developments.
- Construction of revetments, groins, breakwaters, levees, dams, dikes, and weirs.
- Placement of riprap and road fills.

History and authority of the Corps of Engineers

The Corps of Engineers began regulating the nation’s waters in 1899 when Congress passed the Rivers and Harbors Act. The primary focus of this Act was the protection of navigation. In 1968, increasing national concern for the environment and water resources led to the adoption of “Public Interest Review.” Using this process, the Corps of Engineers considers fish and wildlife values, conservation, pollution, aesthetics, ecology, and other public interest factors in its review of projects.

In order to further promote water quality, Congress passed the Federal Water Pollution Control Act Amendments of 1972 (more commonly known as the Clean Water Act). Section 404 of that Act established a permit program to regulate discharges of dredged or

fill material into waters of the United States at specified disposal sites. More specifically, Section 404 jurisdiction is defined as encompassing Section 10 waters plus their tributaries and adjacent wetlands and isolated waters where the use, degradation, or destruction of such waters could affect interstate or foreign commerce.

New laws and policies since that time, including the Clean Water Act of 1977, have further revised the Corps of Engineers Section 404 authority. The regulations also clarified that a 404 permit cannot be issued unless the proposed project complies with the Environmental Protection Agency’s 404(b)(1) guidelines. These guidelines are designed to protect wetlands and other special aquatic sites from unnecessary destruction or degradation.

*The following laws define the regulatory
authorities and responsibilities of the Corps
of Engineers:*

Section 9 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401) authorizes the Corps of Engineers to regulate the construction of any dam or dike across navigable waters of the United States.

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) authorizes the Corps of Engineers to regulate certain structures or work in or affecting navigable waters of the United States.

Section 404 of the Clean Water Act (33 U.S.C. 1344) authorizes the Corps of Engineers to regulate the discharge of dredged or fill material into waters of the United States.

Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) authorizes the Corps of Engineers to regulate the transportation of dredged material for the purpose of disposal in the ocean.

*The Corps of Engineers also coordinates
compliance with related federal laws:*

National Environmental Policy Act
Marine Mammal Protection Act
Fish and Wildlife Coordination Act
Wild and Scenic Rivers Act
Endangered Species Act
National Fishing Enhancement Act
National Historic Preservation Act
National Flood Insurance Act of 1968 (as amended)
Deepwater Port Act
Executive Order 11988 on Flood Management
Federal Power Act

Jurisdiction

The Corps of Engineers regulations broadly define two important terms.

“Waters of the United States” (Section 404 of the Clean Water Act)

The definition of “waters of the United States” includes the following:

- Navigable waters of the United States.
- Wetlands.
- Tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds.
- Interstate waters and their tributaries, including adjacent wetlands.
- All other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce. Section 404 of the Clean Water Act defines the landward limit of jurisdiction as the high tide line in tidal waters and the ordinary high water mark as the limit in non-tidal waters. When adjacent wetlands are present, the limit of jurisdiction extends to the limit of the wetland.

“Navigable Waters of the United States” (Section 10 of the Rivers and Harbors Act) This term includes the oceans and navigable coastal and inland waters, lakes, rivers, and streams. Corps of Engineers jurisdiction extends shoreward to the mean high water line. The Corps of Engineers’ general definition of navigable waters of the United States is “those waters subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the water body, and is not extinguished by later actions or events which impede or destroy navigable capacity.”

Permits

Types of Permits

The Corps of Engineers issues a variety of permits to authorize activities in waters of the United States. These permits are broadly categorized as either general permits or individual permits.

General Permits apply to activities that are substantially similar in nature and cause minimal environmental impacts, individually and cumulatively. There are two kinds of general permits:

Nationwide General Permits — these permits are issued by the Corps of Engineers’ Washington D.C. office for minor projects in certain areas. Some examples are aids to navigation which meet U.S. Coast Guard requirements, outfalls and intakes which have received a National Pollutant Discharge Elimination System (NPDES) permit, single private mooring buoys, backfill and bedding for utility lines, minor bank stabilization, and minor road crossings. All nationwide permits have special conditions that must be met in order for a project to qualify for nationwide permit status. Some nationwide permits also require pre-discharge notification to the Corps of Engineers before work begins.

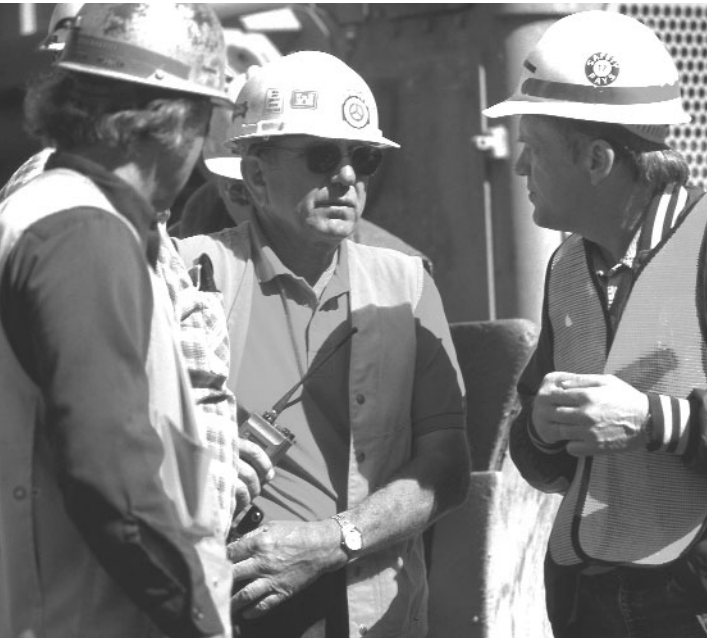
Regional General Permits (RGP) — these permits apply to certain minor activities authorized by the Corps of Engineers on a regional or statewide basis. The RGP streamlines the current permitting process for projects with minimal impacts. In general, the Indiana RGP can be used by the Corps of Engineers to authorize most projects that affect less than 1 acre of waters of the United States, including wetlands, provided the project complies with the terms and general conditions of the RGP.

The Corps of Engineers does not require a detailed review for the activities covered by general permits. However, written verification of regional permit eligibility is necessary from the Corps of Engineers for work covered under regional permits, and some nationwide permits require notification to the Corps of Engineers. The Corps of Engineers also has the final authority to modify or override nationwide permits, so you are advised to obtain written verification that your activity falls under the criteria applicable to the specific permit before beginning work.

Individual Permits apply to activities that do not fall under the criteria for a general permit. Consult a Corps of Engineers representative early to find out what information will be required during the review process. If your project requires an individual permit, the Corps of Engineers issues a public notice advising all interested parties of the proposed activity. This public notice process helps the Corps of Engineers evaluate the probable impact of the project as part of the public interest review.

Contact your Corps of Engineers district office for more information on permits (see the back cover for contact information).

NOTE: Part of the Corps of Engineers’ permit process is to require certification from the state that your project doesn’t violate state water quality standards. That is, you cannot receive a Corps of Engineers permit without also receiving a Water Quality Certification from IDEM (see page 7).



How the Corps of Engineers reviews your project

The Corps of Engineers bases its permit decision on a process called *Public Interest Review*, a public interest balancing process where the benefits of the project are balanced against the detriments. Benefits and detriments are weighed by considering effects on items such as conservation, economics, aesthetics, wetlands, cultural values, navigation, fish and wildlife values, water supply, water quality, energy needs, safety, and any other factors judged important to the needs and welfare of the people.

The following general criteria are considered in evaluating all applications:

- the relative extent of the public and private need for the proposed activity;
- where unresolved conflicts of resource use exist, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed activity; and
- the extent and permanence of the beneficial and/or detrimental effects the proposed project may have on public and private uses to which the area is suited.

A permit will be granted unless the proposal is found to be contrary to the public interest.

Evaluating General Permit Applications

The Corps of Engineers uses a streamlined procedure to process applications for activities authorized by general permits. The Corps of Engineers does not require a detailed review for activities authorized by general permits; however, it recommends that you obtain written authorization before you proceed with any work.

Evaluating Individual Permit Applications

The Corps of Engineers will begin evaluating your application for an individual permit as soon as it receives all the required information. The Corps of Engineers will send you an acknowledgment of its receipt of your application and the file number assigned to your project. You should refer to this number when inquiring about your application.

Individual permit applications must include a detailed project description and drawings. Review may also involve site visits, coordination with other agencies, and data analysis. The Corps of Engineers bases its decision to issue the permit on the evaluation of impacts during the Public Interest Review process. In addition, for activities under Section 404 of the Clean Water Act, the Corps of Engineers also evaluates the project’s compliance with the 404(b)(1) guidelines.

The Corps of Engineers gives consideration and appropriate weight to comments of federal, state, and local agencies and other experts, as well as the general public.

The 404(b)(1) guidelines, prepared by the U.S. Environmental Protection Agency in consultation with the Corps of Engineers, are the federal environmental regulations for evaluating the filling of waters and wetlands. The guidelines restrict discharges of dredged or fill material where less environmentally damaging, practicable alternatives exist. The guidelines prohibit discharges:

- which result in violation of state or federal water quality standards, the Endangered Species Act, and the Marine Sanctuaries Act;
- which cause or contribute to significant degradation of waters and wetlands;
- if all appropriate and practical mitigation has not been taken; or
- if there is not sufficient information to determine compliance with the guidelines.

As a part of the review, the Corps of Engineers, not the applicant, first defines the “basic project purpose” of the proposed activity. The applicant gathers all necessary data for the evaluation of practicable alternatives for the project

consistent with the analysis of alternatives reviewed by the Corps of Engineers. The guidelines also assume that alternatives exist for non-water dependent projects. It is important to understand that if a less damaging practicable alternative to the project exists, the Corps of Engineers will not issue the permit. When unavoidable impacts occur, the Corps of Engineers requires all appropriate and practicable action be taken to mitigate such impacts.

A permit will be granted unless the proposal is found to be contrary to the public interest or if it does not comply with the 404(b)(1) guidelines.

How Long Will it Take to Process My Application?
Processing time usually takes 60 to 120 days unless a public hearing is required or an environmental statement must be prepared. Time frames will vary depending on the complexity of the project, and applicants are encouraged to contact the Corps of Engineers early in the planning stages of any project that is within the Corps of Engineers’ jurisdiction.

Are There Fees?
Fees are required for most permits. There is a \$10 fee for a permit for a non-commercial activity; \$100 will be charged for a permit for a commercial or industrial activity. The district engineer will make the final decision as to the amount of the fee. Do not send a fee when you submit an application. When the Corps of Engineers issues a permit, you will be notified and asked to submit the required fee, payable to the Treasurer of the United States. No fees are charged for transferring a permit from one property owner to another, for any activities authorized by a general permit, or for permits to governmental agencies.



Filling out the application form

The Corps of Engineers has an official application form called the *Engineer Form 4345, Application of a Department of the Army Permit*, which must be used when applying for authorization.

The following instructions will guide you through the form and the information required in each section.

Blocks 1 through 4.
No entries required. These blocks will be completed by the Corps of Engineers.

Block 5 - Applicant’s Name.
Enter the name of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked **Block 5**.

Block 6 - Address of Applicant.
Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked **Block 6**.

Block 7 - Applicant Telephone Number(s).
Please provide the numbers where each party can usually be reached during normal business hours.

Blocks 8 through 11.
These blocks only require completion if you choose to have an agent. Otherwise, skip to Block 12.

Block 8 - Authorized Agent’s Name and Title.
Indicate the name of the individual or agency that you designate to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. *Note: An agent is **not** required.*

Blocks 9 and 10 - Agent’s Address and Telephone Number.
Please provide the complete mailing address of the agent, along with the telephone number where he/she can be reached during normal business hours.

Block 11 - Statement of Authorization.
Authorizes the agent to act on your behalf.

Block 12 - Proposed Project Name or Title.
Please provide a name identifying the proposed project (e.g., Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center).

Block 13 - Name of Water body.
Please provide the name of any stream, lake, marsh, or other waterway that would be directly impacted by the activity. If it is a minor (no name) stream, identify the water body that the minor stream enters.

Block 14 - Proposed Project Street Address.
If the proposed project is located at a site having a street address (not a box number), please enter the address here.

Block 15 - Location of Proposed Project.
Enter the county and state where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked **Block 15**.

Block 16 - Other Location Descriptions.
If available, provide the section, township, and range of the site and/or the latitude and longitude. You may also provide a description of the proposed project location, such as lot numbers or tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile down from the Highway 14 bridge). If your project is along a large river or stream, include the river mile of the proposed project site, if known.

Block 17 - Directions to the Site.
Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site.

Block 18 - Nature of Activity.
Describe the overall activity or project. Give appropriate dimensions of structures such as wingwalls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platform. The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach extra sheets of paper marked **Block 18**.

Block 19 - Proposed Project Purpose.
Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

Blocks 20 through 22.
These blocks only require completion if dredged and/or fill material is to be discharged. Otherwise skip to block 23.

Block 20 - Reason(s) for Discharge.
If the activity involves the discharge of dredged and/or fill material into a wetland or other water body, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21 - Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards.
Describe the material to be discharged and amount of each material to be discharged within Corps of Engineers jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22 - Surface Area of Wetlands or Other Waters to be Filled.
Describe the area to be filled at each location. Specifically identify the surface areas, or parts thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a water body. If more space is needed, attach an extra sheet of paper marked **Block 22**.

Block 23 - Is Any Portion of the Work Already Complete?
Provide background on any part of the proposed project that is already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, and acres filled (if the discharge was made into a wetland or other water body). If the work was done under an existing Corps of Engineers permit, identify the authorization if possible.

Block 24 - Names and Addresses of Adjoining Property Owners.
List complete names and full mailing addresses of the adjacent property owners (public and private), lessees, etc., whose property adjoins the water body or aquatic site where the work is being proposed, so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked **Block 24**.

Note: Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 25 - Information About Approvals or Denials by Other Agencies.
In addition to Corps of Engineers authorization, you may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied), of each application. You do not need to have obtained all other permits before applying for a Corps of Engineers permit.

Block 26 - Signature of Applicant or Agent.
The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

Contact Information

For projects located in central and southern Indiana:

U.S. Army Corps of Engineers
Louisville District
P.O. Box 59 • Louisville, KY 40201-0059
502-315-6733
www.orl.usace.army.mil/

For projects located in northern Indiana:

U.S. Army Corps of Engineers
Detroit District
P.O. Box 1027 • Detroit, MI 48231-1027
313-226-2218
www.lre.usace.army.mil/functions/rf/dtwhome.html



Part II.
Indiana Department of
Environmental Management



Types of activities that require authorization

The Indiana Department of Environmental Management regulates projects that have a discharge to waters of the state (including wetlands), including, but not limited to, those that require a federal permit or license to authorize the project. For example, if you plan to dredge, excavate, or fill within lakes, rivers, streams, ditches, wetlands, or other waters, you need to obtain a federal permit from the Corps of Engineers prior to the commencement of work. Because the Corps of Engineers permit you seek would authorize a discharge to waters of the state, the Corps will require you to seek state authorization from IDEM as part of the permitting process (see flowchart at the beginning of this booklet).

Some examples of activities regulated
by the Section 401 program:

- Depositing fill or dredged material in waters of the state or adjacent wetlands.
- Site development fill for residential, commercial, or recreational developments.
- Construction of bridges, revetments, groins, breakwaters, levees, dams, dikes, and weirs.
- Placement of riprap and road fills.
- Widening, deepening, or construction of a pond or other related structure for the purpose of modifying a mapped floodway or for storm water detention/retention.
- Channelizing, widening, or otherwise altering the flow or path of a stream, ditch, or river.
- Mining sand, gravel, or peat (or other related mining activity) within any water body.

If you intend to conduct any of these types of projects, you should contact IDEM and/or the Corps of Engineers before starting work.

History and authority of IDEM

In 1984, Governor Robert Orr formed a study group to evaluate environmental issues in Indiana and to recommend solutions. One of the group's recommendations was to form a separate environmental agency to deal specifically with the regulation and protection of the environment. In 1985, the Indiana General Assembly passed a law to create IDEM, and Governor Orr signed the executive order on April 1, 1986. IDEM was empowered to implement various federal and state laws regarding the environment, including the Clean Water Act.

IDEM draws authority from two portions of federal and state law regarding the regulation of waters and water quality. First, IDEM is directly given the authority to implement the Section 401 Water Quality Certification Program by the federal Water Pollution Control Act (Clean Water Act or CWA). Section 401 of the CWA [33 U.S.C. 1341] establishes the Section 401 Water Quality Certification Program. Further, the Clean Water Act sets forth the basic requirements of the certification process, including:

- Requirement for public notice.
- Timeframe for review.
- Authority to attach conditions to certifications.

IDEM implements the Section 401 Water Quality Certification Program following these basic requirements. This program is set forth in the federal Clean Water Act in recognition of the fact that Indiana, like every state, has its own water quality standards, and those standards must be met in order for a federal permit to be granted. Congress set aside broad powers for states to implement this program.

Second, IDEM draws authority to regulate waters of the state (including wetlands) and implement this portion of the Clean Water Act from Title 13 of the Indiana Code. The relevant provisions of Title 13 include:

- Authority of IDEM to implement all aspects of the Clean Water Act.
- Definition of waters of the state.
- Authority for the Water Pollution Control Board to adopt rules to protect water quality.

- Requirement that IDEM implement those water quality rules.

In addition, Indiana’s water quality standards are set forth at 327 Indiana Administrative Code (IAC) 2 and establish standards for physical, chemical, and biological properties for Indiana’s waters.

Jurisdiction

IDEM regulates all waters in Indiana that meet the definition of “waters of the state”:

IC 13-11-2-265
Sec. 265. (a) “Waters”, for purposes of water pollution control laws and environmental management laws, means:

1. the accumulations of water; surface and underground, natural and artificial, public and private; or
2. a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.

(b) The term “waters” does not include a private pond; or an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge; unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

Water bodies regulated by IDEM include, but are not limited to, lakes, rivers, streams, ditches, and wetlands. Any activity that would result in a discharge to any of these waters and requires a federal permit or license, regardless of the size, connection to other waters, or location of the water within Indiana, is regulated by IDEM under Section 401 of the CWA as well as under Indiana Code Title 13.

Permits

IDEM reviews projects and issues authorizations through the Section 401 Water Quality Certification (WQC). Under Indiana law, the terms and conditions of the WQC are enforceable by IDEM. All projects that require a WQC undergo the same review process. However, IDEM has “pre-approved” certain Corps of Engineers nationwide and regional general permits. This means that if your project complies with both the terms and conditions of the Corps of Engineers General Permit (see page 2) and the terms and conditions of IDEM’s WQC for that general permit, no separate application to IDEM is required. You may be required to submit a notification form to be in full compliance with approved general permits.

How IDEM reviews your project

Public notice and comment are integral components of IDEM’s WQC review. IDEM is required to public notice the receipt of all applications for WQC. IDEM drafts and publishes a public notice for all projects, except projects that qualify for a Corps of Engineers individual notice. In that case, the Corps of Engineers issues a joint public notice. IDEM public notice periods run for 21 days. Notice is served to adjacent property owners, other state and federal agencies, and any person who requests to be noticed of WQC applications. Any person may request that a public hearing be held to discuss the potential impacts of the project on water quality. Public hearings are held at IDEM’s discretion.

Early Environmental Coordination

If you are planning a project which may impact waters of the state (such as wetlands) you should contact the Office of Water Quality to discuss the potential impacts of the project and what permits or authorizations may be required. You can submit a written request along with information such as plan overviews, environmental

assessments, and other maps and photos of the project site. You may request a response in writing, schedule a meeting in the office (which can include other agencies), meet in the field to inspect the site, or combine some or all of these options. Early coordination gives you the basic information you need to determine if you need certification. This process should be started six months to a year before you intend to begin work.

Most delays in the certification process are caused by applicants not providing all the information required for certification. Through the early coordination process, IDEM representatives can help ensure you know exactly what you need before you submit your application. Typically, you should be prepared to either submit or have available the following:

- copies of wetland delineations;
- plan overviews showing the accurate locations of buildings and other structures;
- location of dredged or excavated material disposal sites;
- plans which clearly show buffer zones and other protective measures; and
- wetland mitigation plans for projects which will involve the filling or excavation of wetlands.

In addition, if you are proposing work in or along streams and rivers, you may be required to submit copies of mussel surveys, sediment sampling tests, and plans which show areas of bank stabilization and tree clearing.

Application Review

IDEM follows a review process that is similar to that of the Corps of Engineers, which ensures consistency between the two agencies.

Upon receipt of an application, your project will be assigned to a project manager. IDEM project managers are divided by regions. Your project manager will be the single point of contact for project reviews (see regional map, page 11).

IDEM assesses the potential impacts of your project and its compliance with water quality standards by reviewing existing information and studies, and by consulting with other agencies and professionals. This review focuses on three basic questions:

1. Can adverse impacts to waters be avoided?
2. If impacts are unavoidable, what steps can be taken to minimize adverse impacts to waters?
3. If adverse impacts cannot be avoided or minimized, can impacts be mitigated to ensure no degradation of water quality?

IDEM will work closely with you on project design and analysis to ensure that all steps in the application process are met.

IDEM evaluates the potential impacts a project may have on the physical, chemical, and biological characteristics of the affected waters. This results in a determination as to whether a proposed project can or will comply with Indiana’s water quality standards.

IDEM will require you to avoid impacts first and foremost, then minimize impacts to the greatest extent possible, and lastly, provide compensatory mitigation for adverse impacts to wetlands and other waters. IDEM will deny water quality certification if your proposed activity will cause adverse impacts to water quality, such as cases where the preceding steps are not followed or cases where compensatory mitigation cannot offset adverse impacts to water quality. You cannot proceed with a project without certification from IDEM.

How Long Will It Take to Process My Application?

By law, IDEM has up to one year from the date of the receipt of a completed application to render a decision. However, IDEM will attempt to have all decisions completed within 60 days of the date on which a complete application was received. No decision can be made until the 21-day public notice has expired and all comments have been addressed (if any were received).

Are There Fees?

Currently, there is no application fee for Section 401 Water Quality Certification.

Filling out the application form

IDEM has an official application form, *Application for Section 401 Water Quality Certification - State Form # 48598 (6-01)*, which must be used when applying for Section 401 Water Quality Certification.

The following instructions will guide you through the application form and will explain the information required in each section.

Block 1 - Applicant Information.

Provide your name, address, and telephone number. You MUST provide a contact name. For complex projects or projects with multiple contractors and responsible parties, designation of a single point of contact will speed up the review process and enable more timely responses to requests for information.

Block 2 - Agent Information.

If you choose to be represented by an agent, provide the agent’s address and telephone information. You are not required to have an agent.



Block 3 - Project Location.

Provide specific information relating to the location of your proposed project. Provide accurate maps depicting the project location. Include the Universal Transverse Mercator (UTM) coordinates including the datum (e.g. 1927 North American). The UTM coordinates can be obtained from the United States Geological Survey 7.5-minute series topographic quadrangle maps. Try to keep detail on maps to a minimum, focusing instead on the location of structures and associated water bodies. You may include full size plans to supplement 8 1/2" by 11" map sheets.

Block 4 - Project Purpose and Description.

Provide the proposed or actual start date and the anticipated completion date. If you have started your project before obtaining a permit and WQC, you may be in violation of federal and state law. Give a narrative description of the proposed project. You should include any supplemental environmental reports, assessments, or other documents that explain or justify the proposed configuration of the project. You should describe possible alternatives to the proposed project that would avoid impacts to the aquatic resource. You should also describe ways to minimize impacts, including a description of how you plan to contain any dredged/excavated material to prevent re-entry into waterways or wetlands. If you can avoid impacts to the aquatic resource, you may be able to avoid the requirement to obtain a WQC. Alternatives may include: construction on the upland portions of the property; rerouting a roadway to avoid a wetland; or alternate design plans. Minimization of the impacts may decrease any mitigation requirements that might otherwise apply and increase the chances of receiving WQC. Minimization may include reduction of the amount of dredging, filling, or vegetative clearing. Describe the purpose of the project (that is, what goal or outcome will be met by the construction of the project).



IDEM file photo

Block 5 - Project Information.

Describe the type, composition, and quantity of fill material to be placed in the wetlands or other aquatic resources. When answering questions regarding project impacts on water resources, clearly state the units of measurement for all impacts. Summarization of impacts, associated mitigation, and references to drawings, maps, or other supporting documents in a table improves review times for applications. If one or more questions in the application form do not apply to your project, indicate this in the block with “NOT APPLICABLE.” Use additional sheets to answer the questions if needed.

Block 6 - Drawing/Plan Requirements.

You must submit drawings/plans that are consistent with the listed specifications. Your project will be delayed if these materials are not submitted in the formats specified in the application.

Block 7 - Documentation Requirements.

All projects involving impacts to wetlands must have a wetland delineation approved by the Corps of Engineers in order for IDEM to determine the impacts to water quality associated with the project. DO NOT submit an application involving impacts to wetlands without a wetland delineation. Submittal of photographs depicting the project site is highly encouraged. Photos should be clearly labeled with the direction of the shot, the area depicted, and notes on relevant features. A map depicting the location of photos on the project site is also useful and should be included whenever photos are submitted.

Block 8 - Additional Information That May Be Required.

You are not required to submit the information specified in this section unless directed to do so by IDEM. However, you may submit the information if you anticipate that such information will be required. For example, if you are aware of issues on the proposed project site which may impact water resources, such as the presence of contaminated soils or sediments, endangered species, well field protection areas, or previously permitted activities on the project site, information regarding these points should be submitted with the certification application.

Block 9 - Permitting Requirements.

Provide information regarding your application to the Corps of Engineers. If you have not yet contacted the Corps of Engineers, you should do so as soon as possible. Review Part I of this booklet (page 1) for an overview of the Corps of Engineers’ permitting process, and see the map on page 6 to determine the appropriate office to contact for more information. Provide information regarding any other federal, state, or local permits, variances, licenses, or certifications required for your project. Please indicate whether they were approved, denied, or are pending.

Block 10 - Adjoining Property Owners and Addresses.

List the names and addresses of landowners adjacent to the property on which your project is located. Adjacent property owners are persons who share property lines with your property. Inclusion of names and addresses of other persons (or entities) potentially affected by your project should include persons within your neighborhood, lake association, or in the general vicinity that may have an interest in your project. Consult with IDEM for further clarification.

Block 11 - Signature - Statement of Affirmation.

You must sign and date the application. If the applicant is a corporation, a responsible person from that corporation must sign. No other signatures will be accepted.

Contact information

IDEM - Office of Water Quality

Section 401 Water Quality Certification Program
P.O. Box 6015 • IGCN Room 1255
Indianapolis, IN 46206-6015
1-800-451-6027 or 317-233-8488
www.in.gov/idem/water/planbr/401/index.html

IDEM Regional Service Areas

Indianapolis Offices

Indiana Government Center North
100 N. Senate Ave. • Indianapolis, IN 46204
1-800-451-6027 or 317-232-8603 • Fax: 317-232-8406

Western Select Properties

2525 N. Shadeland Ave. • Indianapolis, IN 46219
Toll Free: 800-451-6027
Local: 317-308-3173 • Fax: 317-308-3339

Northern Regional Office

220 W. Colfax Ave., Ste 200 • South Bend, IN 46601-1634
Toll Free: 800-753-5519 • Local: 574-245-4870
Fax: 574-245-4877

Northwest Regional Office

NBD Bank Bldg. • 504 N. Broadway, Ste. 418
Gary, IN 46402-1942
Toll Free: 888-209-8892 • Local: 219-881-6712
Fax: 219-881-6745

Southwest Regional Office

208 N.W. Fourth St, Ste 201 • Evansville, IN 47708-1353
Toll Free: 888-672-8323 • Local: 812-436-2570
Fax: 812-436-2572



Part III.

Indiana Department of Natural Resources



Types of activities that require authorization

The Indiana Department of Natural Resources (DNR) regulates various construction activities within, over, and/or under the state's waterways. State laws enacted by the Indiana General Assembly created these regulations in order to allow Hoosiers to utilize the state's water-related resources in a prudent manner, while minimizing flood-related damages and protecting Indiana's environmental and cultural resources.

Some examples of regulated activities:

1. Altering the level of the water or the shoreline of a public freshwater lake by excavating; filling in; or otherwise causing a change in the area or depth of; or affecting the natural resources, scenic beauty, or contour of; the lake below the waterline or shoreline. Activities include: dredging, new seawalls, seawall refacing, underwater beaches, boat wells, boat houses, and fish attractors.
2. All ditch and/or drain work that is both located within 1/2 mile of a ten (10) acre or more in size freshwater lake's shoreline and has a bottom depth below the lake's legal or average normal water level. Activities include: ditch construction and/or reconstruction; tile drain installation and/or repair; and the installation of pipelines having non-watertight joints.
3. Construction of any type within the floodway of any state waterway, such as bank protection, bridges, buildings, channel work, dams, excavations, fills, flood control projects, levees, outfalls, residential construction, and certain utility activity.
4. The placement, filling, or erection of a permanent structure in; water withdrawal from; or material extraction from a navigable waterway.
5. The taking of sand, gravel, stone, or other mineral or substance from or under the bed of a navigable waterway.
6. The construction of any channel that meets the following definition: an artificial channel; the improved channel of a natural watercourse; or a channel that connects to any river or stream in Indiana for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities.

History and authority of the DNR

In the 1930s and 1940s, Indiana was besieged with floods that took lives and damaged property. Interested in preventing such losses from happening again, in 1945, the Indiana General Assembly enacted the Flood Control Act. Created to prevent and limit floods, the act specifies that all floodways are to remain uninhabited and clear of any obstruction that would restrict their capacity to move floodwaters. The act also specifies that all flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana are to be regulated. Originally, this regulatory authority was given to the Indiana Flood Control and Water Resources Commission. But in 1965, this commission and other state governmental entities were combined into the Department of Natural Resources (DNR). Within the DNR, the Division of Water was established and given regulatory authority over the Flood Control Act and other related regulations.

The following laws define the regulatory authorities and responsibilities of the DNR:

Lake Preservation Act, IC 14-26-2, authorizes the DNR to regulate Indiana's public freshwater lakes so that the recreational, natural resource, and scenic beauty values of these waters are preserved and protected.

Lowering of Ten Acre Lakes Act, IC 14-26-5, authorizes the DNR to regulate the lowering of a ten (10) acre or more in size freshwater lake's water level as the result of ditch and/or drain activity.

Flood Control Act, IC 14-28-1, authorizes the DNR to regulate activities within the floodway of any state waterway so as to best control and minimize the extent, height, and force of potential floods.

Navigable Waterways Act, IC 14-29-1, authorizes the DNR to regulate any activity within a navigable water that may: unreasonably impair the navigability of the waterway; cause significant harm to the environment; and pose an unreasonable hazard to life or property.

Sand and Gravel Permits Act, IC 14-29-3, authorizes the DNR to regulate the taking of sand, gravel, stone, or other mineral or substance from under the bed of a navigable waterway of Indiana.

Construction of Channels Act, IC 14-29-4, authorizes the DNR to regulate the construction of channels along the state's waterways to protect public health, safety, and welfare.

Jurisdiction

The DNR's limits of jurisdiction within waters depends on the activity and the type of water body in question.

The following list provides limits of jurisdiction for each of the laws the DNR implements.

For each of the following acts, the DNR has jurisdiction if/when the following conditions are met:

Lake Preservation Act: at or lakeward of a public freshwater lake's legal or average normal shoreline.

Lowering of Ten Acre Lakes Act: any ditch or drain within one-half mile of a ten (10) acre or more in size lake that has a bottom depth lower than the legal or average normal water level of a lake within one-half mile of the lake.

Flood Control Act: the area within the floodway produced by the regulatory flood. "Regulatory flood" means "a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the Natural Resources Commission. The regulatory flood is equivalent to the base flood or the 100-year frequency flood." "Floodway" means "the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flow of the regulatory flood of any river or stream."

Navigable Waterways Act: any water that meets the definition of "navigable." This term means "a waterway which has been declared to be "navigable" or a "public highway" by one or more of the following: a court, the Indiana General Assembly, the United States Army Corps of Engineers, the Federal Energy Regulatory Commission, a board of county commissioners, or the Natural Resources Commission."

Sand and Gravel Permits Act: the bed of any of Indiana's navigable waterways, which include rivers, streams, creeks, runs, canals, channels, ditches, lakes, reservoirs, or embayments.

Construction of Channels Act: any channel that meets the following definition: an artificial channel; the improved channel of a natural watercourse; or a channel that connects to any river or stream in Indiana for the purpose of providing access by boat or otherwise to public or private industrial, commercial, housing, recreational, or other facilities.

Permits

The DNR reviews projects and issues authorizations through the state statutes listed above. Projects that are regulated under more than one statute are issued separate permits with appropriate conditions from each statute. The Flood Control Act and Flood Plain Management Rule (312 IAC 10) and Lake Preservation Act and Lake

Construction Activities Rule (312 IAC 11) establish permit exemptions for a number of projects, either as a function of the watershed's physical parameters (by the project type) or through the establishment of jurisdictional limits.

Exemptions Through Jurisdictional Limits

Projects or portions of projects may not be subject to DNR regulation if:

- Portions of a project are outside of the floodway.
- A waterway's drainage area at the downstream end of the project site is less than 1 square mile (640 acres).

Primary Exemptions

A project is not subject to DNR regulation if it is:

- A reconstruction or maintenance project (as defined in the "County Drainage Code," IC 36-9-27) on an open stream or an open regulated drain, if the total length of the stream or drain is less than or equal to 10 miles. "Total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7-1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.
- A state or county road bridge project where the drainage area at the bridge structure is less than 50 square miles and the project site is in a rural area. "Rural area" means an area where:
 - (1) the flood protection grade of each residential, commercial, or industrial building impacted by the project is higher than the regulatory flood elevation under the project condition; and
 - (2) the area lies outside:
 - (a.) the corporate boundaries of a consolidated city or an incorporated city or town; and
 - (b.) the territorial authority for comprehensive planning established under IC 36-7-4-205(b).



Other Exemptions

Contact the DNR to see if your project qualifies for any of the following project exemptions:

Floodways

- Utility line crossings and relocation projects.
- Removal of obstructions for river and stream maintenance.
- Residential additions and reconstructions.
- Wetland restoration projects.
- Qualified outfall projects.

Public freshwater lakes

- Temporary structures (i.e., piers, boat lifts).
- Dry hydrants.
- Reface of existing bulkhead seawall with glacial stone.
- Impoundments on the Tippecanoe River.
- Public water supply reservoirs.



IDEM photographer Andrew Pellosa

Early environmental coordination

Before beginning any large project, the DNR strongly encourages you to pursue an early coordination process with the agency. Pre-application consultation with the DNR can be used to clarify permit requirements, processing procedures, and verify the need for a permit application submittal.

You can obtain written comments concerning a project from the DNR Division of Water’s Environmental Unit prior to submittal of the official application to DNR. These comments would be used on the subsequent permit application as long as the project has not been revised.

To begin the early coordination process, you must submit a written request to the Division of Water’s Environmental Unit that includes the following:

1. Brief project proposal.
2. Project location on a U.S. Geological Survey quadrangle map.
3. Drawing of the area that will be disturbed.

SEA 368 Review Process

In addition to the above process, a formal, early coordination procedure for drainage board projects was established by the creation of Section 53.5 of the Indiana Drainage Code (IC 36-9-27) in 1995. Section 53.5 states that if a reconstruction or maintenance project is subject to regulation under the Flood Control Act or the Lowering of Ten Acre Lakes Act, or if it requires an Individual Permit under Section 404 of the federal Clean Water Act, the county surveyor or drainage board shall request an on-site field review of the project. The following process is detailed in the law:

1. The county surveyor or drainage board, through written notification to the DNR Division of Water, requests an on-site field review meeting.
2. Within 14 days, the Division contacts the surveyor (or the surveyor’s designee) and IDEM to determine the date, time, and location of the meeting.
3. The on-site field review is conducted by one or more staff representatives from:
 - (a) the county,
 - (b) the DNR, including one engineer from the Division of Water,
 - (c) IDEM, and
 - (d) the local Soil and Water Conservation District, if applicable.
4. Within 30 days of the on-site field review, the Division of Water will provide the county with a summary of the review. The summary will include:
 - (a) a narrative and map defining the project location,
 - (b) a description of the proposed work,
 - (c) a list of conditions that DNR would place on a permit to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work,
 - (d) a list of conditions that IDEM would place on a certification to comply with Section 401 of the federal Clean Water Act, if it is possible to ensure compliance with Section 401 by placing conditions on the certification, and
 - (e) a list of any other conditions that the DNR and/or IDEM would place on a permit or certification for the proposed project.

How the DNR reviews your project

Each of the six statutes listed in the *History and Authority of the Indiana DNR* section (page 13) has specific criteria by which a project is judged to be acceptable or not. Conditions may also be added to an authorization in order to bring a project design up to the standards of the criteria noted in the statute. The primary conditions and criteria of each act are listed below.

Lake Preservation Act: Using the information you submit, the DNR determines your project’s approvability by evaluating both its singular and cumulative impacts against the following criteria:

1. whether or not the project will adversely affect the natural resources and natural scenic beauty of the lake;
2. whether or not the project will adversely affect the water level of the lake; and
3. whether or not the project will compromise the public trust doctrine.

Lowering of Ten Acre Lakes Act: DNR evaluates a project’s impact on “... land, water, lakes, fish, wildlife, and botanical resources that may be affected by the proposed work.” This is accomplished by evaluating both the singular and cumulative impacts against the following criteria:

1. whether or not the project will endanger the lake level; and
2. whether or not the project will result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

Flood Control Act: The Flood Control Act places the burden of proving the project’s approvability on the applicant. Using the information you submit, the DNR determines your project’s approvability by evaluating both its singular and cumulative impacts against the criteria stipulated in the act:

1. whether or not the project will adversely affect the efficiency of, or unduly restrict the capacity of, the floodway;
2. whether or not the project will constitute an unreasonable hazard to the safety of life or property; and
3. whether or not the project will result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

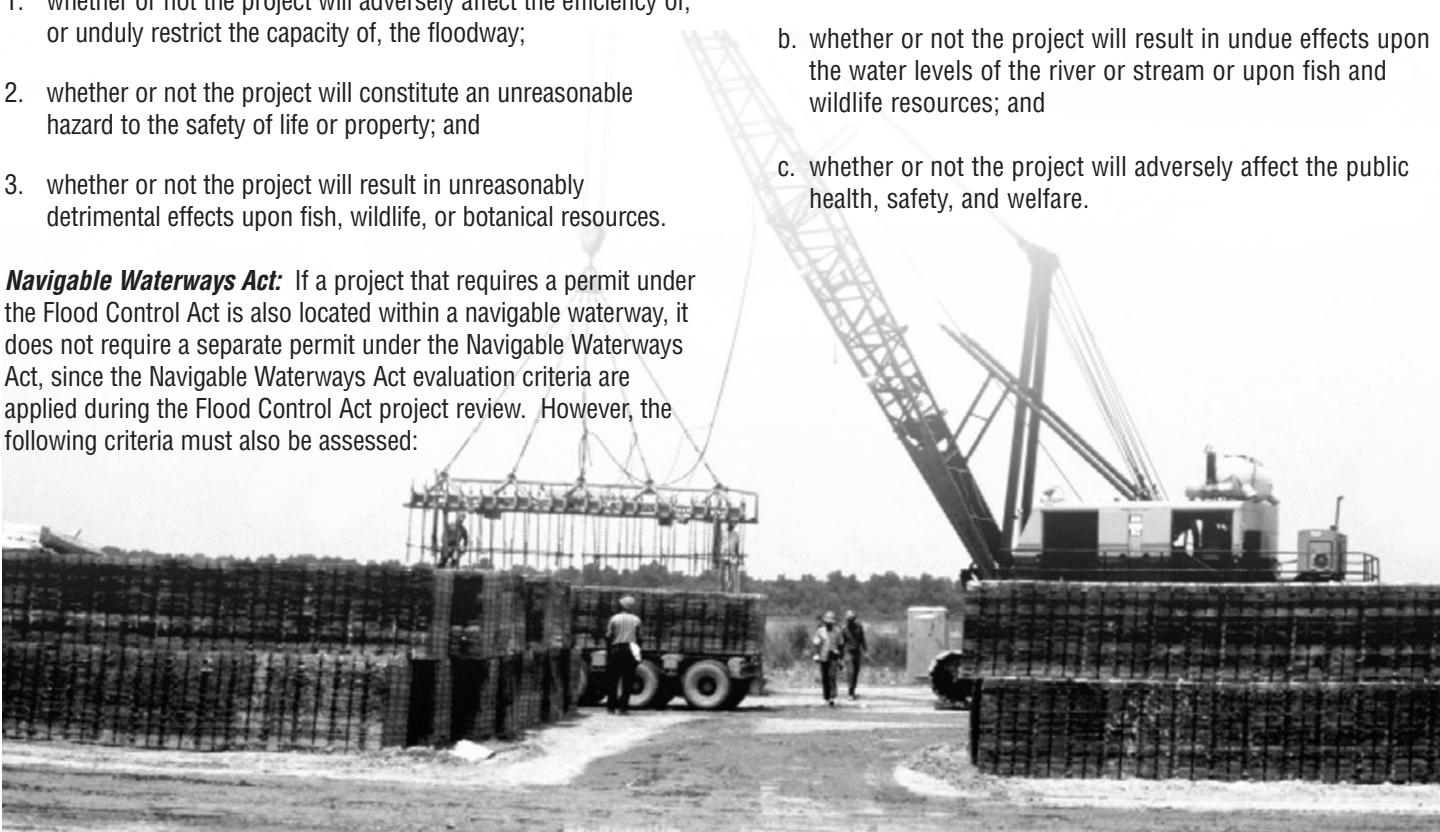
Navigable Waterways Act: If a project that requires a permit under the Flood Control Act is also located within a navigable waterway, it does not require a separate permit under the Navigable Waterways Act, since the Navigable Waterways Act evaluation criteria are applied during the Flood Control Act project review. However, the following criteria must also be assessed:

1. whether or not the project will unreasonably impair the navigability of the waterway;
2. whether or not the project will cause significant harm to the environment; and
3. whether or not the project will pose an unreasonable hazard to life or property.

Sand and Gravel Permits Act: Projects which are subject to jurisdiction under this Act are also subject to jurisdiction under the Flood Control Act and the Navigable Waterways Act. To determine a project’s approvability under the Sand and Gravel Permits Act, the DNR evaluates your project against the same criteria set forth under both the Flood Control and Navigable Waterways Act.

Construction of Channels Act: Prior to evaluating the approvability of your project, you must demonstrate to the DNR that you have:

1. obtained the written approval of IDEM for sewage disposal facilities involved with the channel and each facility that the channel is to serve, and
2. will dedicate any water created to general public use. Upon demonstrating you have satisfied these requirements, the approvability of your project will be evaluated against the following criteria:
 - a. whether or not the project will constitute an unreasonable hazard to life and property;
 - b. whether or not the project will result in undue effects upon the water levels of the river or stream or upon fish and wildlife resources; and
 - c. whether or not the project will adversely affect the public health, safety, and welfare.



General Public Notice

All permit applications submitted to the DNR must be placed on general public notice upon receipt by the agency. This is in addition to the notice you will have already given to property owners adjacent to the project site. You do not have to conduct this general public notice, it will be prepared and distributed by DNR staff. Unless an emergency has been declared by the Director of the DNR, the agency cannot act upon your application until 30 days after the date of the general public notice. At any time during the agency review process, a public hearing may be requested by the public if the provisions under 312 IAC 2-3 have been satisfied.

Inter-Department Consultation

For projects reviewed under the Lake Preservation Act, Flood Control Act and/or the Lowering of Ten Acre Lakes Act, DNR conducts a two-part, simultaneous review. One aspect of the review involves a technical assessment of the project’s impacts on the efficiency or capacity of the floodway of a river or stream or on the water level or shoreline of a freshwater lake. Additionally, the hydraulic assessment of possible impacts on the floodway also takes into consideration the project’s potential to create an unreasonable hazard to the safety of life or property upstream or downstream of the project site. This portion of the project review is performed by staff of the Division of Water.

The second aspect of the DNR’s project review involves the proposed project’s environmental impacts. This portion of the review is conducted by staff of several DNR divisions, and is coordinated by a staff member of the Division of Water’s Environmental Unit. The divisions involved in the project review and their areas of expertise are given below:

- **Division of Soil Conservation** - reviews project plans to determine if proper soil conservation practices are being incorporated into the design to reduce sedimentation of waterways or adjoining properties.
- **Division of Outdoor Recreation** - reviews project sites to determine if recreational sites developed with Land and Water Conservation Fund grants will be impacted. The Outdoor Recreation Division also informs the Division of Water’s Environmental Unit if the project will occur along one of Indiana’s listed Scenic Waterways.
- **Division of Nature Preserves** - reviews project sites against the Natural Heritage Database for reports of endangered, threatened, or specially listed plant or animal species. This information is forwarded to the Division of Water’s Environmental Unit.
- **Division of Forestry** - reviews project plans for impacts to Indiana’s hardwood resources.
- **Division of Fish and Wildlife** - receives information noted above from other DNR divisions and conducts field inspections to determine whether or not the project will result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.



DNR photographer Richard Fields

If the project will occur along a navigable waterway, two additional divisions of the DNR become involved in the project review. These divisions and their responsibilities are:

- **Division of Law Enforcement** - reviews project plans to determine impacts upon navigability and boater safety.
- **Division of Historic Preservation and Archaeology** - reviews project plans and site to determine if any known historical, architectural, or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be impacted by the proposed project.

Final Processing

Once the environmental review has been completed, final comments are combined with the hydraulic review results and the final authorization documents are presented to the Director of the Division of Water for approval. If a public hearing through the DNR has been held, the transcript of this proceeding is included in the final documents presented to the Division of Water Director. Final approval documents will include specific and general permit conditions and information concerning appeal procedures.

Are There Fees?

With the exception of the permitting program within the Navigable Waterways Act, all of the regulatory programs administered by the DNR contain a non-refundable processing fee. These fees must be paid in full before the DNR can initiate its review of an application. If a project requires a permit under more than one regulatory program, the processing fee required by each program must be submitted. Following are the application processing fees for each DNR regulatory program.

Processing Fee

Code	Code Title	Fee
IC 14-26-2	Lake Preservation Act	\$25
IC 14-26-5	Lowering of Ten Acre Lakes Act	\$25
IC 14-28-1	Flood Control Act	\$50
IC 14-29-1	Navigable Waterways Act	No Fee
IC 14-29-3	Sand and Gravel Permits Act	\$50
IC 14-29-4	Construction of Channels Act	\$100

Each application submitted electronically through Access Indiana Information Network is subject to a \$15 network processing fee in addition to the statutory processing fee.

If a permit is issued under the provisions of the Sand and Gravel Permits Act, the statute requires the submission of two post-action fees: surety bond and royalties. The act requires that, as a condition of the permit, “the permittee shall give bond in the amount and with surety approved by the Department for full and prompt compliance with the terms and conditions of the permit.” The Navigable Waterways Rule states that the bond must be in one of the following forms:

1. a surety bond (will not be accepted unless it is issued by a company holding an applicable certificate of authority from the Indiana Department of Insurance);
2. a cash bond; or
3. a certificate of deposit.

In addition to the surety bond, the Sand and Gravel Permits Act also requires that the DNR “... collect from the permittee ... the amount of the reasonable value of the mineral or substance taken, measured by weight, cubic dimensions, or other common and usual measurements.” The rule states that the royalty value “... shall be as determined by the Department ...”

There are certain occasions when the material removed from or under the bed of a navigable waterway either has little commercial value or can be used for public benefit. Under these circumstances the rule allows the DNR to waive the royalty fee; however, the surety requirement remains in place.

How Long Will It Take to Process My Application?

There are no time limits for review of permits by the DNR. The Department strives to be efficient with reviews and thorough in its consideration of all information. Typically, Department actions are completed between 60 and 120 days from the date on which a complete application was received. No final actions can be taken until the statutorily mandated 30-day public notice has expired and comments from the reviewing divisions have been received.

Filling out the application form

The DNR has an official application form, *Joint Application Form - State Form 42946 (R2/3-98)*, which must be used when applying for any permit administered by the DNR. The DNR has a detailed application handbook that describes how to fill out the application, what to enclose with a given application, how to comply with public notice requirements, and other important information. Forms and a guide are available from the DNR at the following web address:

<http://www.in.gov/dnr/water/permits/index.html>

You may also obtain copies from the DNR Division of Water at the address listed at the end of this section. As an overview, any application submittal to the DNR must contain four primary pieces of information:

1. completed and signed application form with the correct application fee;
2. verification of public notice;
3. site location that includes the parameters of the project; and
4. complete project plans.

In general, all adjacent property owners to a project site must be notified of their right to review project plans and be notified of the DNR decisions regarding the project. Proof of notice to the adjacent property owners must be provided before the DNR can finalize its review of the proposed project.

A complete set of plans must also be submitted with every permit application. For most projects, the submitted plans should include a general project boundary map, scaled plan and profile sheets, and cross-section drawings. Typical cross-sections for specified reaches of the project may be submitted in lieu of detailed cross-sectional information throughout the project length. Although not required, a detailed project narrative and/or description will also aid in the processing of the application. Applications to the DNR are made through the Division of Water.

Contact information

Indiana Department of Natural Resources
Division of Water
402 West Washington Street • Room W264
Indianapolis, Indiana 46204-2748
Phone: 317-232-4160 • 877-928-3755 (toll free)
www.in.gov/dnr/water/

Glossary of Terms

Cofferdam — a temporary watertight enclosure built in the water and pumped dry to expose the bottom so that construction, as of piers, may be undertaken.

Discharge of Dredged Material — any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

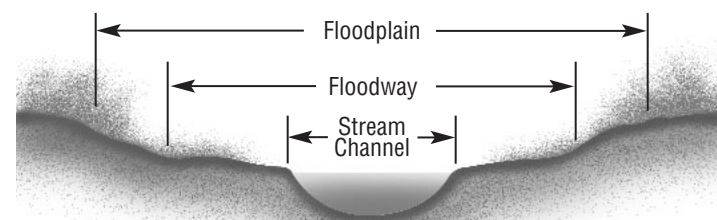
Discharge of Fill Material — the addition of fill material into waters of the United States, including wetlands.

Dredged Material — material that is excavated or dredged from waters of the United States, including wetlands.

Early Coordination — contact between the applicant and the appropriate agency regarding a proposed project, prior to the completion of an application form. The purpose of such contact is to provide for informal discussions about the pros and cons of the proposal before an applicant makes irreversible commitments of resources (funds, detailed designs, etc.). The process is designed to provide the applicant with an assessment of the viability of some of the more obvious alternatives available to accomplish the project purpose, to discuss measures for reducing the impacts of the project, and to make known the factors the agency must consider in its decision-making process. The process ranges from a single phone call between applicant and an agency staff person, to several meetings that involve the applicant, agency staff member(s), interested resource agencies (federal, state, or local), and sometimes the interested public.

Fill Material — any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body.

Floodway — the channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flow of the regulatory flood of any river or stream.



Groin — a structure projecting out from a shoreline into the water for protection against beach erosion.

Mean High Water Mark — with respect to ocean and coastal waters, the line on the shore established by the average of all high tides. It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark are used, such as physical markings, lines of vegetation or comparison of the area in question with an area having similar physical characteristics for which tidal data are readily available.

Navigable Waters — those waters that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce. Section 10 and/or Section 404 permits are required for construction activities in these waters.

Ordinary High Water Mark — the line on the shores established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. This term is significant because it is the landward regulatory limit for non-tidal waters (in the absence of adjacent wetlands).

Outfall — a drainage outlet that discharges materials into a body of water (e.g., a pipe that carries water from a factory to a cooling lake).

Public Notice — the primary method of advising all interested parties of a proposed activity for which a permit is sought, and of soliciting comments and information necessary to evaluate the probable beneficial and detrimental impacts of the project on the public interest.

Public Interest Review — the evaluation process used by the U.S. Army Corps of Engineers to determine the probable impacts of a proposed activity. Expected benefits are balanced against reasonably foreseeable detriments. The Corps of Engineers' policy is to provide applicants with a timely and carefully weighed decision which reflects the public interest. All factors relevant to the proposal are considered, including conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, wetland values, energy needs, safety, food production, and the needs and welfare of the people.

Regulatory Flood — a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the Natural Resources Commission. The regulatory flood is equivalent to the base flood or the 100-year frequency flood.

Revetment — a facing made of stone masonry or other materials used to support an embankment.

Riparian Corridor — the banks of a natural course of water such as a stream or river.

Riprap — a loose assemblage of stones erected in water or on soft ground to stabilize banks and/or to prevent erosion.

Waters of the State — In general, waters of the state include all lakes, ponds, rivers, streams, creeks, drainage ditches, and wetlands, including groundwater.

Waters of the United States — essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters.

Weir — a small dam placed across a river or canal to raise or divert the water.

Wetland Delineation — the scientific determination of the boundaries of a wetland according to specific legal criteria.

Wetland Mitigation — the practice of compensating for the destruction or degradation of wetlands in one location by creating or restoring wetlands in another location.

Wetlands — areas characterized by growth of wetland vegetation (bulrush, cattails, rushes, sedges, willows) where the soil is saturated during a portion of the growing season or the surface is flooded during some part of most years. Wetlands generally include swamps, marshes, bogs, and similar areas.



IDEM photographer Andrew Pelloso

Frequently Asked Questions

Q. What are the “waters of the state?”

A. In general, waters of the state include all lakes, ponds, rivers, streams, creeks, drainage ditches, and wetlands, including groundwater.

Q. What are the “waters of the United States?”

A. Essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters.

Q. What are wetlands and why are they important to Indiana?

A. The Corps of Engineers defines wetlands as: Those areas that are saturated by surface or groundwater at a frequency and duration sufficient to support . . . a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands have plants, such as cattails or sycamore trees, which can live in water or wet soil, are wet or flooded for part of the year, and have soils which have formed under wet conditions, such as muck or peat. We typically call wetlands by other names, such as marshes, swamps, bogs, sloughs, or bottom lands.

Indiana has lost more than 80% of its original wetlands due to drainage or filling for farming, roads, and buildings. Wetlands are not wastelands. Wetlands are important because:

- They purify water by filtering and trapping sediment, chemicals, and excess nutrients before water enters other water bodies or groundwater.
- They provide habitat for fish, waterfowl, many endangered species, and other wildlife which use these areas to breed, find food, and protect their young.
- They reduce flood damages by storing and slowing floodwaters.
- They protect shorelines from erosion.
- They provide areas for recreation, education, and research.

Q. How do I find out if there are wetlands on my property?

A. Ideally, you must have a person trained in the use of the Corps of Engineers 1987 Wetland Delineation Manual assess the project site using this methodology. Any areas which meet the three parameters listed in the manual are jurisdictional wetlands (wetlands regulated by the Corps of Engineers and IDEM) and are protected by the Clean Water Act. IDEM staff cannot perform wetland delineations. IDEM advises that an applicant have a Corps of Engineers staff person perform the delineation. The Corps of Engineers has a long waiting list for delineations, and may only be able to perform a wetland determination. This assessment can tell if wetlands are present on the property, but cannot pin-point boundaries of wetlands. In order to apply for

permits, you must be able to depict the boundaries of wetlands. Many applicants hire wetland scientists or consultants to perform delineations. These delineations are then verified by the Corps of Engineers for accuracy. For projects on agricultural property, you may be able to obtain technical assistance from the staff of the Natural Resources Conservation Service.

Q. I have a copy of a National Wetland Inventory map - doesn't this show the location of wetlands?

A. National Wetland Inventory (NWI) Maps were compiled by the U.S. Fish and Wildlife Service using aerial photography and limited assessment. These maps depict areas which, in many cases, are similar to jurisdictional wetlands. Since these wetlands were not mapped using the Corps of Engineers delineation manual, the maps cannot be used in place of an on-site wetland delineation. They are very useful as a planning tool, since they may give you the first indication that wetlands may be present on your property. Used in conjunction with soil surveys published by the Natural Resources Conservation Service, these resources can provide information on areas which may be jurisdictional wetlands.

Q. How do I know what permits I need?

A. If the project you are proposing involves a water body in Indiana, you can call the numbers given on the back cover of this booklet to find out if you will need a permit. Some examples of projects needing permits are given at the beginning of this booklet.

Q. Are there application fees for the permits I need?

A. Fees for Section 404 permit applications from the Corps of Engineers range from zero to \$100. Currently, no fees are required to apply for Water Quality Certification from IDEM. Fees for permit applications through DNR range from zero to \$100.

Q. How long will it take to obtain the permits I need?

A. The Corps of Engineers normally acts on Section 404 permit applications in 60 to 120 days. IDEM normally acts on Water Quality Certification applications in less than 60 days. DNR normally acts on its water-related applications in 60 to 120 days. All of these timeframes are from the date the agency receives a complete application.

Q. How can I design my project to eliminate the need for any of these permits?

A. Review the regulated activities identified in each section of this handbook, and design your project to avoid regulated activities. The various agencies can help you do this. In general, avoid wetlands adjacent to water bodies and select sites that are above the ordinary high water mark.

Q. What is mitigation?

A. Mitigation refers to the reduction or lessening of the negative impacts that a project will have on water bodies (usually wet lands). The best way to do this is to avoid or minimize the negative impacts when designing the project, but it can also be achieved by creating or restoring wetlands off-site.



IDEM photographer Andrew Pelloso